

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2007-000044

06/20/2008

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

PREMIERE R V & MINI STORAGE L L C

JAMES R NEARHOOD

v.

MARICOPA COUNTY, et al.

LOUIS F COMUS III

UNDER ADVISEMENT RULING

(Plaintiff's Motion For Summary Judgment and Defendant's Cross-Motion For Summary Judgment)

The facts are not in dispute. In December 2003, the owner of what was then parcel 501-46-003E, comprising some seventeen acres, divided his property between a sixteen-acre tract (the property involved in this case) and a one-acre tract. This division was not reflected in the County Assessor's records until August 31, 2004, at which time two new parcels were created from the previous parcel and full cash values and limited property values assigned to each portion. The issue is whether the assignment of values was properly performed, and this in turn depends on when the property was "split" pursuant to A.R.S. § 42-13302. Each party has moved for summary judgment; as the issue raised here is purely one of law, summary judgment to one party is appropriate.

The relevant statutory language, at A.R.S. § 42-13302(B), reads, "In the case of property that is split or consolidated after September 30 through December 31 of the valuation year, ... the total limited property value of the new parcel or parcels shall be the same as the total limited property value of the original parcel or parcels." Nowhere in Chapter 11 of Title 42 is the term "split," or when it occurs, defined. When faced with an ambiguity in the statutory language, the Court is to consider the consequences of interpreting the statute under each of the possible meanings, and determine which interpretation most closely approximates the intent of the

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legislature. *Canon School Dist. No. 50 v. W.E.S. Const. Co., Inc.*, 177 Ariz. 526, 529 (1994). (The Court observes that the principle preferring the interpretation that favors the taxpayer, *see, e.g., State ex rel. Arizona Dept. of Revenue v. Phoenix Lodge No. 708, Loyal Order of Moose, Inc.*, 187 Ariz. 242, 247 (App. 1996), is of no help here. As discussed by counsel at oral argument, while under the facts in this case the taxpayer benefits by defining “split” as the earlier date, different facts could reverse the parties’ positions. Thus, there is no interpretation that consistently favors the taxpayer.)

The Court concludes that it means the division of the property itself by its owner. It establishes a date objectively ascertainable by the property owner and the interested public, while the County’s alternative would require reference to the internal operations of the Assessor’s Office. Grammatically, a focus on the division of the property itself is more consonant with the legislature’s use of the word as a verb to describe what is done to the property. The County, to support its interpretation of “split” as an administrative act by the assessor, recasts the word as a noun, “a split,” resulting from a “split-inducing event” that is referenced nowhere in the statute.

Some additional guidance may be gleaned from portions of subsections (A)(4) and (B) amended by the legislature in 2007. The clause in subsection (B) replaced by an ellipsis above (the amendment to subsection (A)(4) employs the same material language) excludes from the general rule on computing total limited property value those cases where splitting results from “an action initiated by a governmental entity.” (The Court does not suggest that the 2007 amendment governs the valuation of the property for tax year 2006, and for that reason omitted it from the initial citation; it uses the amendment only as an aid to statutory interpretation.) If a “split” is an administrative act of the assessor, it is inherently an action initiated by a governmental entity: the exception would always apply, and the rule never. The Court acknowledges that legislative interpretation of a statute enacted by a previous legislature, especially when separated by some length of time, is of marginal value. *See, e.g., San Carlos Apache Tribe v. Superior Court*, 193 Ariz. 195, 209 ¶ 30 (1999). However, the Court is mindful that, in adding the new language, the legislature intended to retain the former procedure in a class of cases where splitting was not the consequence of a governmental action. It therefore concludes that the statutory scheme as envisioned by the 2007 legislature recognizes the existence of property splitting actions independent of the actions of the assessor.

Finally, A.R.S. § 42-16251(3)(e)(iii) lists the untimely-captured splitting of one parcel of real property into two or more parcels as one of a class of misassessments identified as correctable errors. While this might be explained merely as acknowledging and accommodating the brief window imposed by practical considerations preceding the statutory notice deadline of September 30, a broader reading that it envisions the splitting of a parcel by its owner and the recognition the assessor has not yet revised the tax rolls in time is no less consistent, and is supported by the inclusion of other owner-driven acts such as new construction and demolition

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of improvements in the same paragraph. Similarly, A.R.S. § 42-15105 addresses the notice requirement triggered by the valuation of property affected by various occurrences, at least some of which (new construction, changes in property use) are not administrative acts of the assessor. Drawing from it the County's conclusion that property splitting is an assessorial act is therefore unsupported.

Forum Development, L.C. v. Arizona Dept. of Revenue, 192 Ariz. 90, 97 (App. 1997), holds that the mere determination of a new full cash value and computation of the resultant change in limited property value does not constitute an assessorial action. It does not provide the guidance the County urges as to exactly what does.

A finding that the word "split" refers to the action of the owner and not of the assessor does not mean that any resulting increase in valuation must go unrecognized for the tax year in question. The error correction procedure of A.R.S. § 42-16252 is available; as mentioned above, A.R.S. § 42-16251(3)(e)(iii) identifies the failure to capture the splitting of a parcel as a correctible error authorizing its implementation.

Therefore, IT IS ORDERED:

1. Granting Plaintiff's Motion For Summary Judgment and denying Defendant's Cross-Motion For Summary Judgment.
2. Denying Plaintiff's Objection/Motion To Strike Defendant's Amended Statement of Facts.